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Attorneys for Plaintiff  
AURORA LOAN SERVICES, LLC

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

1 AURORA LOAN SERVICES LLC, a California limited liability company,

**Plaintiff.**

V

MARIA R. METCALF

**Defendant**

Case No. 3:08-CV-00872-WOH-RBB

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION TO REMAND**

Date: August 11, 2008  
Time: 11:00 a.m.  
Courtroom: 4

**NO ORAL ARGUMENT WILL BE HEARD  
[CivLR 7.1(d)]**

Plaintiff AURORA LOAN SERVICES, LLC (“Aurora”) respectfully submits the following Memorandum of Points and Authorities in support of its Motion for Remand.

## **MEMORANDUM OF POINTS & AUTHORITIES**

1

## INTRODUCTION

Maria R. Metcalf (“Defendant”) filed a petition for removal of an Unlawful Detainer action brought against her by Aurora Loan Services, LLC, in the California Superior Court for San Diego County, claiming this Court has federal question jurisdiction. On the face of the complaint, no questions of federal law are presented; rather, the complaint merely seeks restitution and possession of certain real property located in the County of San Diego, State of California, and owned by

1 Aurora. The present action is indeed a simple Unlawful Detainer action. Defendant contends that  
2 jurisdiction in this Court lies on the grounds that the federal Truth in Lending Law is implicated by  
3 Aurora's Unlawful Detainer complaint. However, a careful reading of the nine paragraph complaint  
4 filed by Aurora shows that the relief sought by Aurora is not based on federal law, and does not  
5 depend on the resolution of a substantial question of federal law. Accordingly, Aurora seeks to  
6 remand this action to the state court in which it originally files its complaint.

7 **II.**

8 **STATEMENT OF FACTS**

9 On February 28, 2008, Aurora Loan Services, LLC ("Aurora") acquired title to certain real  
10 property located at 954 Surrey Dr., Chula Vista, CA 91902 by Trustee's Deed Upon Sale following  
11 a non-judicial foreclosure sale. The Trustee's Deed Upon Sale was recorded in the Official Records  
12 of the San Diego Recorder's Office on February 28, 2008, as document number 2008-0102980. A  
13 copy of the Trustee's Deed Upon Sale is attached hereto as **Exhibit A** and incorporated by reference.  
14 On March 18, 2008, Defendant was served with written notice to surrender the property within three  
15 days pursuant to California Code of Civil Procedure 1162. A copy of the three day notice to quit is  
16 attached hereto as **Exhibit B** and incorporated by reference. A copy of the proof of service for the  
17 three day notice to quit is attached hereto as **Exhibit C** and incorporated by reference. On May 7,  
18 2008, Aurora filed an Unlawful Detainer action in the Superior Court for San Diego County because  
19 Defendant continued to occupy the property. A true and correct copy of the summons and complaint  
20 filed in state court is attached hereto as **Exhibit D** and incorporated by reference. Aurora sought  
21 judgment for restitution and possession of the property, money damages and its costs of suit.

22 **III.**

23 **STATEMENT OF LAW**

24 In the absence of a statutory exception, a state court action may be removed to federal court  
25 only if the federal court would have had jurisdiction over it as originally brought by the plaintiff.  
26 28 U.S.C. § 1441; *Snow v. Ford Motor Co.*, 561 F.2d 787, 789 (9th Cir. 1977); *United States v.*  
27 *Alisal Water Corp.*, 431 F.3d 643, 650 (9th Cir. 2005). To remove a state court action, the defendant  
28 must, within 30 days of the date of receipt of the initial state court pleadings, file in the district court

1 a notice of removal that “contain [s] a short and plain statement of the grounds for removal, together  
 2 with a copy of all process, pleadings, and orders served upon such defendant or defendants in such  
 3 action.” 28 U.S.C. § 1446(a) and (b) [emphasis added].

4 **IV.**

5 **ARGUMENT**

6 **A. REMAND IS NECESSARY BECAUSE THIS COURT LACKS JURISDICTION**

7 Subject jurisdiction extends to those cases in which a well-pleaded complaint establishes  
 8 either that: (1) federal law creates the cause of action; or (2) the plaintiff's right to relief necessarily  
 9 depends on a resolution of a substantial question of federal law. *Franchise Tax Bd. v. Construction*  
 10 *Laborers Vacation Trust*, 463 U.S. 1, 27-28 (1983). The presence or absence of federal question  
 11 jurisdiction is governed by the well-pleaded complaint rule, which provides that federal question  
 12 jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly  
 13 pleaded complaint. *Wayne v. DHL Worldwide Express*, 294 F.3d 1179, 1183 (9th Cir. 2002);  
 14 *California ex rel. Sacramento Metro. Air Quality Mgmt. Dist. v. United States*, 215 F.3d 1005, 1014  
 15 (9th Cir. 2000); *see also Gully v. First Nat. Bank*, 299 U.S. 109, 113 (1936) (the federal question  
 16 “must be disclosed upon the face of the complaint, unaided by the answer or by the petition for  
 17 removal”). The existence of a defense based on federal law is insufficient to support jurisdiction,  
 18 even if both parties agree that the federal defense is the only question truly at issue. *Wayne v. DHL*  
 19 *Worldwide Express*, 294 F.3d 1179, 1183 (9th Cir. 2002). The plaintiff is the “master of the claim,”  
 20 and may avoid federal jurisdiction by relying exclusively on state law. *Abada v. Charles Schwab*  
 21 & Co.

22 , 300 F.3d 1112, 1118 (9th Cir. 2002).

22 The removal statute is strictly construed against removal jurisdiction, and the burden of  
 23 establishing federal jurisdiction falls on the party invoking the statute. *See Abrego Abrego v. Dow*  
 24 *Chem. Co.*, 443 F.3d 676, 685 (9th Cir. 2006); *California ex rel. Lockyer v. Dynegy, Inc.*, 375 F.3d  
 25 831, 838 (9th Cir. 2004). The propriety of removal is determined solely on the basis of pleadings  
 26 filed in state court, i.e., by looking “to the complaint at the time the removal petition was filed.”  
 27 *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1065 (9th Cir. 1979); *see also Williams v.*  
 28 *Costco Wholesale Corp.*, 471 F.3d 975, 976 (9th Cir. 2006) (*per curiam*).

1       Defendant seeks to remove an Unlawful Detainer action. On the face of the complaint filed  
 2 in the state court, Aurora seeks only to regain possession to certain real property to which it acquired  
 3 title through a non-judicial foreclosure sale. *See* Complaint ¶ 9. The real property is located at 954  
 4 Surrey Dr., Chula Vista, CA 91902, in San Diego County. Complaint ¶ 1. The complaint contains  
 5 nine paragraphs, of which none contain questions of federal law. Paragraphs 1 through 4 contain a  
 6 background of the parties; paragraphs 5 through 8 set forth the grounds on which Aurora is entitled  
 7 to possession of the real property, namely its acquisition of title from a Trustee's Deed Upon Sale;  
 8 and paragraph 9 cites the relevant state statutes on which Aurora asserts a right to restitution and  
 9 possession of the real property.

10       Clearly, federal law does not create the rights on which Aurora seeks restitution and  
 11 possession of the real property from defendant; rather, California Code of Civil Procedure sections  
 12 1161a(b)(3) and 1161a(c) do. Moreover, Aurora's right to relief is in no way dependent on the  
 13 resolution of a substantial matter of federal law. The only nexus with Federal law that defendant can  
 14 argue is that her parallel federal action against Aurora claiming violations of the federal Truth in  
 15 Lending Law serves as a defense to Aurora's Unlawful Detainer action in state court. This, however,  
 16 cannot form the basis for removal jurisdiction because Aurora's complaint does not present any  
 17 questions implicating the federal Truth in Lending Law. *Wayne v. DHL Worldwide Express*, 294  
 18 F.3d 1179, 1183 (9th Cir. 2002); *California ex rel. Sacramento Metro. Air Quality Mgmt. Dist. v.*  
 19 *United States*, 215 F.3d 1005, 1014 (9th Cir. 2000). As plaintiff, Aurora is the "master of its claim"  
 20 and should not be directed to prosecute its action in federal court. *See Abada v. Charles Schwab*  
 21 & Co.

22 , 300 F.3d 1112, 1118 (9th Cir. 2002). Accordingly, this Court should remand the present  
 23 matter because the Court does not possess the requisite subject matter jurisdiction to consider the  
 substantive merits of the case.

24 **B. REMAND IS NECESSARY BECAUSE DEFENDANT FAILED TO COMPLY WITH**  
 25 **THE REMOVAL STATUTE**

26 Pursuant to 28 U.S.C. section 1448(a), the procedure for removal requires that defendant file  
 27 in the district court a signed notice of removal containing a short and plain statement of the grounds  
 28 for removal, together with a copy of all process, pleadings, and orders served upon the defendant in

1 the action for which removal is sought. 28 U.S.C. § 1448(a). Defendant failed to comply with 28  
2 U.S.C. section 1446(a). Defendant neither attached any copies of process, pleadings or orders served  
3 in the Superior Court action, nor disclosed when the Superior Court action was served on her.  
4 Accordingly, because Defendant's petition for removal does not satisfy section 1448(a), this matter  
5 should be remanded to the state court.

V.

## CONCLUSION

8 The Court should remand the present matter. Defendant failed to comply with the  
9 requirements for removal by not attaching the complaint and other documents served on her with her  
10 petition. More importantly, jurisdiction of the Court does not exist in this matter because no  
11 questions of federal law are presented on the face of the complaint filed by Aurora in state court.  
12 Accordingly, the Court should remand this matter to the state court.

14 || Dated: June 9, 2008 PITE DUNCAN, LLP

PITE DUNCAN, LLP

By: /s/ Thomas N. Abbott  
THOMAS N. ABBOTT  
Attorneys for Plaintiff AURORA LOAN  
SERVICES, LLC  
E-mail: tabbott@piteduncan.com

**EXHIBIT A**

DOC # 2008-0102980

WHEN RECORDED MAIL TO:

AURORA LOAN SERVICES LLC  
C/O AURORA LOAN SERVICES, INC.  
601 FIFTH AVE  
SCOTTSBLUFF, NE 69361

MAIL TAX STATEMENTS TO

Same as above

6148

16  
78  
DNP

FEB 28, 2008 11:59 AM

OFFICIAL RECORDS  
SAN DIEGO COUNTY RECORDER'S OFFICE  
GREGORY J. SMITH, COUNTY RECORDER  
FEES: 12.00  
OC: NA

PAGES: 2



Title Order No. M114522

Trustee Sale No. 07-0500-CA

Loan No. 0033798224

## TRUSTEE'S DEED UPON SALE

APN 593-311-14-00

The undersigned grantor declares:

- |    |  |              |
|----|--|--------------|
| 1) | The Grantee herein <u>was</u> the foreclosing beneficiary. |              |
| 2) | The amount of the unpaid debt together with costs was      | \$964,896.55 |
| 3) | The amount paid by the grantee at the trustee sale was     | \$875,000.00 |
| 4) | The documentary transfer tax is                            | \$NONE       |
| 5) | Said property is in the CITY of CHULA VISTA                | (Signature)  |

and ROBERT E. WEISS INCORPORATED (herein called Trustee), as the duly appointed Trustee or substituted Trustee under the Deed of Trust hereinafter described, does hereby grant and convey, but without covenant or warranty, express or implied, to AURORA LOAN SERVICES LLC (herein called Grantee), all of its right, title and interest in and to that certain property situated in the County of SAN DIEGO, State of California, described as follows:

LOT 198 OF RANCHO ROBINHOOD III, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 8604, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON JUNE 24, 1977.

Situs: 954 SURREY DRIVE, CHULA VISTA, CA 91902

### RECITALS:

This conveyance is made pursuant to the powers conferred upon Trustee by that certain Deed of Trust dated 02-01-2007 and executed by MARIA R METCALF, A SINGLE WOMAN, as Trustor, and Recorded 02-13-2007, Book , Page , Instrument 2007-0101097 of official records of SAN DIEGO County, California, and after fulfillment of the conditions specified in said Deed of Trust authorizing this conveyance.

• Trustee Sale No. 07-0500-CA

Loan No. 0033798224

Title Order No. M714522

6149

Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the Office of the Recorder of said County.

All requirements of law regarding the mailing of copies of notices or the publication of a copy of the Notice of Default or the personal delivery of the copy of the Notice of Default and the posting and publication of copies of the Notice of a Sale have been complied with.

Said property was sold by said Trustee at public auction on 02-22-2008 at the place named in the Notice of Sale, in the county of SAN DIEGO California, in which the property is situated. Grantee, being the highest bidder at such sale, became the purchaser of said property and paid therefore to said trustee the amount bid being \$875,000.00 in lawful money of the United States, or by the satisfaction, pro tanto, of the obligation then secured by said Deed of Trust.

DATE: 02-22-2008

**ROBERT E. WEISS INCORPORATED, As Trustee**



ROBERT E. WEISS, PRESIDENT

STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

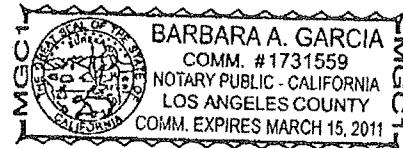
On 02-22-2008 before me, Barbara A. Garcia the undersigned Notary Public in and for said county, personally appeared Robert E. Weiss, President, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Notary Public in and for said County and State



**EXHIBIT B**

**THREE DAY NOTICE TO QUIT**  
(Cal. Code of Civ. Pro. § 1161a(b)(3))

**To: MARIA R. METCALF, A SINGLE WOMAN  
954 SURREY DRIVE, CHULA VISTA, CA 91902**

YOU ARE HEREBY NOTIFIED that the real property and improvements thereon commonly known as 954 Surrey Drive, Chula Vista, California 91902 ("the Property") have been sold to Aurora Loan Services LLC at a non-judicial foreclosure sale in accordance with Cal. Civ. Code §§ 2924 et seq. under the power of sale contained in that certain Deed of Trust executed by Maria R. Metcalf, a single woman, and recorded on February 13, 2007 as Instrument No. 2007-0101097 in the Office of the San Diego County Recorder. The new owner's title has been duly perfected by Trustee's Deed Upon Sale recorded in the Office of the San Diego County Recorder.

YOU ARE FURTHER NOTIFIED that your occupancy of the Property shall terminate effective THREE (3) CALENDAR DAYS after service of this Notice upon you.

WITHIN THREE (3) CALENDAR DAYS following service of this Notice, you must vacate and surrender possession of the Property to the undersigned, or legal proceedings will be immediately commenced to declare your occupancy forfeited, to obtain restitution and possession of the Property and to obtain a money judgment against you for damages and court costs.

Dated: March 19, 2008

FILE NO: 07-0500-CA  
LOAN NO: 0033798224

ROBERT E. WEISS INCORPORATED

By:

JAMES T. LEE

Attorneys for Property Owner  
Aurora Loan Services LLC

*Direct All Inquiries to:*

JAMES T. LEE  
State Bar No. 110838  
Law Offices of  
ROBERT E. WEISS INCORPORATED  
920 South Village Oaks Drive  
Covina, CA 91724  
Phone: (626) 967-4302  
FAX: (626) 339-7103

**EXHIBIT C**

Attorney of Party Without Attorney (Name and Address) Robert E. Weiss, Incorporated 920 Village Oaks Drive Covina CA 91722 Attorney For: PLAINTIFF				Telephone No.  (626)967-4302	FOR COURT USE ONLY
				Reference Number: 379314 07-0500-CA	
Plaintiff/Petitioner: Aurora Loan Services, LLC Defendant/Respondent: vs. Maria R. Metcalf, et al.					
<b>PROOF OF SERVICE</b>	Hearing Date:	Time:	Dept./Div.:	Case Number:  <b>NOTICE</b>	

I, the undersigned declare that at the time of the service of the papers herein referred to, I was at least EIGHTEEN (18) years of age, and that I served the following notice:

**Three Day Notice to Quit**

On the following tenant(s): Maria R. Metcalf, A Single Woman

Address: 954 Surrey Drive  
Chula Vista, CA 91902

Date and Time of Posting: 3/18/2008 at 4:01pm.

BY POSTING a copy for each above-named tenant in a conspicuous place on the property therein described, there being no person of suitable age or discretion to be found at any known place of residence or business of said tenant(s) AND MAILING by first-class mail on saiddate a copy to each tenant by depositing said copies in the U.S. Mail in a sealed envelope with postage fully pre-paid, addressed to the above-named tenant(s) at the place where the property is situated.

7. Person Serving (name, address, and telephone No.):

**Attorney Service of San Dimas**  
**142 East Bonita Avenue**  
**San Dimas, CA 91773**  
**(909)394-1202 Fax (909)394-1204**

Fee for service: \$ \$50.00

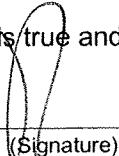
Julie Ratliff

Registered California process server:

- (i) independent contractor
- (ii) Registration No.: 5659
- (iii) County: Los Angeles

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 4/2/2008



(Signature)

**EXHIBIT D**

SUM-130

**SUMMONS**  
**(CITACION JUDICIAL)**  
**UNLAWFUL DETAINER—EVICTION**  
**(RETENCIÓN ILÍCITA DE UN INMUEBLE—DE SALOJO)**

**NOTICE TO DEFENDANT:****(AVISO AL DEMANDADO):**

MARIA R. METCALF; and DOES 1 to 10, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:****(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

AURORA LOAN SERVICES LLC

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

You have 5 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. (To calculate the five days, count Saturday and Sunday, but do not count other court holidays. If the last day falls on a Saturday, Sunday, or a court holiday then you have the next court day to file a written response.) A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 5 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. (Para calcular los cinco días, cuente los sábados y los domingos pero no los otros días feriados de la corte. Si el último día cae en sábado o domingo, o en un día en que la corte esté cerrada, tiene hasta el próximo día de corte para presentar una respuesta por escrito). Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

- |  |   |
|--|---|
| 1. The name and address of the court is:<br><i>(El nombre y dirección de la corte es):</i>   | CASE NUMBER:<br><i>(Número del Caso):</i> |
| SUPERIOR COURT OF THE STATE OF CALIFORNIA<br>COUNTY OF SAN DIEGO<br>500 3RD AVE.<br>CHULA VISTA, CA 91910<br>SOUTH COUNTY REGIONAL CENTER  |   |
| 2. The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:<br><i>(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):</i><br>EDWARD A. TREDER<br>ROBERT E. WEISS INCORPORATED<br>920 SOUTH VILLAGE OAKS DRIVE<br>COVINA, CALIFORNIA 91724                     |   |
| 3. <i>(Must be answered in all cases) An unlawful detainer assistant (Bus. &amp; Prof. Code, §§ 6400–6415) <input checked="" type="checkbox"/> did not <input type="checkbox"/> did for compensation give advice or assistance with this form. (If plaintiff has received any help or advice for pay from an unlawful detainer assistant, complete item 6 on the next page.)</i> |   |
| Date: May 07, 2008<br><i>(Fecha)</i>   |   |
| Clerk, by _____, Deputy<br><i>(Secretario)</i>   |   |

*(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)*

*(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).*

(SEAL)

4. **NOTICE TO THE PERSON SERVED:** You are served

- a.  as an individual defendant.
- b.  as the person sued under the fictitious name of (specify): \_\_\_\_\_
- c.  as an occupant
- d.  on behalf of (specify): \_\_\_\_\_

under:  CCP 416.10 (corporation)  
 CCP 416.20 (defunct corporation)  
 CCP 416.40 (association or partnership)  
 CCP 415.46 (occupant)

CCP 416.60 (minor)  
 CCP 416.70 (conservatee)  
 CCP 416.90 (authorized person)  
 other (specify): \_\_\_\_\_

5.  by personal delivery on (date): \_\_\_\_\_

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>EDWARD A. TREDER</b> <b>ROBERT E. WEISS INCORPORATED</b> <b>920 SOUTH VILLAGE OAKS DRIVE</b> <b>COVINA, CA 91724</b> <b>COVINA, CALIFORNIA 91724</b> <b>TELEPHONE NO.: (626) 967-4302 FAX NO.: (626) 339-7103</b>		FOR COURT USE ONLY
ATTORNEY FOR (Name): <b>PLAINTIFF</b>		
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> STREET ADDRESS: <b>COUNTY OF SAN DIEGO</b> MAILING ADDRESS: <b>500 3RD AVE.</b> CITY AND ZIP CODE: <b>CHULA VISTA, CA 91910</b> BRANCH NAME: <b>SOUTH COUNTY REGIONAL CENTER</b>		
CASE NAME: <b>AURORA LOAN SERVICES LLC v. METCALF, et al.</b>		
<b>CIVIL CASE COVER SHEET</b> <input type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input checked="" type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER:  JUDGE:  DEPT:

Items 1-6 below must be completed (see instructions on page 2).

## 1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b>	<b>Contract</b>	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403)
<input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)	<input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37)	<input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
<b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b>	<b>Real Property</b>	<b>Enforcement of Judgment</b>
<input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23)	<input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26)	<input type="checkbox"/> Enforcement of judgment (20)
<b>Non-PI/PD/WD (Other) Tort</b>	<b>Unlawful Detainer</b>	<b>Miscellaneous Civil Complaint</b>
<input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35)	<input type="checkbox"/> Commercial (31) <input checked="" type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)	<input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42)
<b>Employment</b>	<b>Judicial Review</b>	<b>Miscellaneous Civil Petition</b>
<input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a.  Large number of separately represented parties    d.  Large number of witnesses  
b.  Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve    e.  Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court  
c.  Substantial amount of documentary evidence    f.  Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a.  monetary b.  nonmonetary; declaratory or injunctive relief c.  punitive

## 4. Number of causes of action (specify): ONE

5. This case  is  is not a class action suit.

## 6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: May 07, 2008

EDWARD A. TREDER

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

## NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGOAURORA LOAN SERVICES LLC

Case No. \_\_\_\_\_

vs.

## CERTIFICATE OF ASSIGNMENT

MARIA R. METCALF; and DOES 1 to 10,  
inclusive

A civil action or proceeding presented for filing must be accompanied by this certificate. If the ground is the residence of a party, name and residence shall be stated.

The undersigned declares that the above-entitled matter is filed for proceedings in the \_\_\_\_\_ District of the Superior Court under Rule 404 of this court for the checked reason:

 General Collection

## Nature of Action

## Ground

- |  |  |
|--|--|
| <input type="checkbox"/> 1 Adoption  | Petitioner resides within the district.  |
| <input type="checkbox"/> 2 Conservator   | Petitioner or conservatee resides within the district.                               |
| <input type="checkbox"/> 3 Contract  | Performance in the district is expressly provided for.                               |
| <input type="checkbox"/> 4 Equity  | The cause of action arose within the district.                                       |
| <input type="checkbox"/> 5 Eminent Domain  | The property is located within the district.   |
| <input type="checkbox"/> 6 Family Law  | Plaintiff, defendant, petitioner or respondent resides within the district.          |
| <input type="checkbox"/> 7 Guardianship  | Petitioner or ward resides within the district or has property within the district.  |
| <input type="checkbox"/> 8 Harassment  | Plaintiff, defendant, petitioner or respondent resides within the district.          |
| <input type="checkbox"/> 9 Mandate   | The defendant functions wholly within the district.                                  |
| <input type="checkbox"/> 10 Name Change  | The petitioner resides within the district.  |
| <input type="checkbox"/> 11 Personal Injury  | The injury occurred within the district.   |
| <input type="checkbox"/> 12 Personal Property  | The property is located within the district.   |
| <input type="checkbox"/> 13 Probate  | Decedent resided or resides within the district or had property within the district. |
| <input type="checkbox"/> 14 Prohibition  | The defendant functions wholly within the district.                                  |
| <input type="checkbox"/> 15 Review   | The defendant functions wholly within the district.                                  |
| <input type="checkbox"/> 16 Title to Real Property   | The property is located within the district.   |
| <input type="checkbox"/> 17 Transferred Action   | The lower court is located within the district.                                      |
| <input checked="" type="checkbox"/> 18 Unlawful Detainer   | The property is located within the district.   |
| <input type="checkbox"/> 19 Domestic Violence  | The petitioner, defendant, plaintiff or respondent resides within the district.      |
| <input type="checkbox"/> 20 Other _____  |  |
| <input type="checkbox"/> 21 THIS FILING WOULD NORMALLY FALL WITHIN JURISDICTION OF SUPERIOR COURT. |  |

The address of the accident, performance, party, detention, place of business, or other factor which qualifies this case for filing in the above-designated district is:

954 SURREY DR.

ADDRESS

(NAME - INDICATE TITLE OR OTHER QUALIFYING FACTOR)

CHULA VISTA  
(CITY)

CA

(STATE)

91902  
(ZIP CODE)

I declare, under penalty of perjury, that the foregoing is true and correct and that this declaration was executed on

May 07, 2008

at COVINA

, California

EDWARD A. TREDELL

Signature of Attorney/Party

**NOTICE: EVERYONE WHO LIVES IN THIS RENTAL UNIT MAY BE EVICTED BY COURT ORDER. READ THIS FORM IF YOU LIVE HERE AND IF YOUR NAME IS NOT ON THE ATTACHED SUMMONS AND COMPLAINT.**

1. If you live here and you do not complete and submit this form within 10 days of the date of service shown on this form, you will be evicted without further hearing by the court along with the persons named in the Summons and Complaint.
2. If you file this form, your claim will be determined in the eviction action against the persons named in the Complaint.
3. If you do not file this form, you will be evicted without further hearing.

CLAIMANT OR CLAIMANT'S ATTORNEY (Name and Address):	TELEPHONE NO.:	FOR COURT USE ONLY
ATTORNEY FOR (Name):		
<b>NAME OF COURT:</b> SUPERIOR COURT OF THE STATE OF CALIFORNIA STREET ADDRESS: COUNTY OF SAN DIEGO MAILING ADDRESS: 500 3RD AVE. CITY AND ZIP CODE: CHULA VISTA, CA 91910 BRANCH NAME: SOUTH COUNTY REGIONAL CENTER		
PLAINTIFF: AURORA LOAN SERVICES LLC		
DEFENDANT: MARIA R. METCALF; and DOES 1 to 10, inclusive		
<b>PREJUDGMENT CLAIM OF RIGHT TO POSSESSION</b>		
Complete this form only if ALL of these statements are true: 1. You are NOT named in the accompanying Summons and Complaint. 2. You occupied the premises on or before the date the unlawful detainer (eviction) Complaint was filed. 3. You still occupy the premises.		CASE NUMBER:  (To be completed by the process server)
		DATE OF SERVICE:  (Date that this form is served or delivered, and posted, and mailed by the officer or process server)

I DECLARE THE FOLLOWING UNDER PENALTY OF PERJURY:

1. My name is (specify):
2. I reside at (street address, unit No., city and ZIP code):
3. The address of "the premises" subject to this claim is (address):
4. On (insert date): [redacted], the landlord or the landlord's authorized agent filed a complaint to recover possession of the premises. (This date is the court filing date on the accompanying Summons and Complaint.)
5. I occupied the premises on the date the complaint was filed (the date in item 4). I have continued to occupy the premises ever since.
6. I was at least 18 years of age on the date the complaint was filed (the date in item 4).
7. I claim a right to possession of the premises because I occupied the premises on the date the complaint was filed (the date in item 4).
8. I was not named in the Summons and Complaint.
9. I understand that if I make this claim of right to possession, I will be added as a defendant to the unlawful detainer (eviction) action.
10. (Filing fee) I understand that I must go to the court and pay a filing of \$ [redacted] or file with the court the form "Application for Waiver of Court Fees and Costs." I understand that if I don't pay the filing fee or file with the court the form for waiver of court fees within 10 days from the date of service on this form (excluding court holidays), I will not be entitled to make a claim of right to possession.

(Continued on reverse)

## VERIFICATION

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I have read the foregoing UNLAWFUL DETAINER SUMMONS AND COMPLAINT

and know its contents.

 CHECK APPLICABLE PARAGRAPHS

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am  an Officer  a partner  a  of \_\_\_\_\_

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason.  I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.  The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for \_\_\_\_\_ a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on May 07, 2008, at COVINA, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

EDWARD A. TREDER

Type or Print Name

Signature

## PROOF OF SERVICE

1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of \_\_\_\_\_, State of California.

I am over the age of 18 and not a party to the within action; my business address is: \_\_\_\_\_

On, \_\_\_\_\_ I served the foregoing document described as \_\_\_\_\_

on \_\_\_\_\_ in this action

 by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list: by placing  the original  a true copy thereof enclosed in sealed envelopes addressed as follows: BY MAIL \*I deposited such envelope in the mail at \_\_\_\_\_, California.

The envelope was mailed with postage thereon fully prepaid.

 As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at \_\_\_\_\_ California in the ordinary course of business. I am aware that on motion of the

party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on \_\_\_\_\_, at \_\_\_\_\_, California.

 \*\*(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on \_\_\_\_\_, at \_\_\_\_\_, California.

 (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct. (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

\*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN  
MAIL SLOT, BOX, OR BAG)

\*\*(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

1 EDWARD A. TREDER  
 2 State Bar No. 116307  
 3 Law Offices

4 ROBERT E. WEISS INCORPORATED  
 5 920 S. Village Oaks Drive  
 Covina, CA 91724  
 (626) 967-4302  
etreder@rewlaw.com

6 Attorneys for Plaintiff

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 COUNTY OF SAN DIEGO, SOUTH COUNTY REGIONAL CENTER

9 AURORA LOAN SERVICES LLC

10 Plaintiff,  
 11 vs.  
 12

13 MARIA R. METCALF; and DOES 1 to 10,  
 inclusive,

CASE NO.

14 COMPLAINT FOR UNLAWFUL DETAINER  
 (DEMAND UNDER \$10,000)  
 15 (Cal. Code of Civ. Pro. §§ 1161a(b)(3),(c))  
 16  
 17 Defendants.

18 Plaintiff alleges the following:

19  
 20 1. Plaintiff AURORA LOAN SERVICES LLC is the current owner of certain real  
 21 property and improvements thereon commonly known as 954 Surrey Drive, Chula Vista, California  
 22 91902 following a non-judicial foreclosure sale held in accordance with California Civil Code §§ 2924  
 23 et seq. Plaintiff's title was duly perfected by Trustee's Deed Upon Sale recorded on February 28, 2008  
 24 as Instrument No. 2008-0102980 in the Office of the San Diego County Recorder, a true and correct  
 25 copy of which is attached hereto as Exhibit "1" and incorporated herein by this reference.  
 26  
 27  
 28

1       2. Defendant MARIA R. METCALF is the current occupant of the real property and was  
2 the original trustor under the foreclosed deed of trust or the successor-in-interest to such original trustor  
3 and the last vested owner of record as of the foreclosure sale date.  
4

5       3. The true names and capacities, whether individual, corporate, associate or otherwise of  
6 defendants named herein as DOES 1 through 10, and of each of them, are unknown to plaintiff who  
7 therefore sues said defendants by their fictitious names as allowed by California Code of Civil Procedure  
8 § 474. Plaintiff asks leave of the court to amend its complaint to include the true names and capacities of  
9 said defendants when the same have been ascertained.  
10

11      4. Plaintiff is informed and believes and based thereon alleges that each defendant sued  
12 herein as DOE 1 through 10, inclusive, claims a possessory interest in the real property hereafter  
13 described as a tenant or successor-in-interest to the former owner.  
14

15      5. On March 18, 2008, Defendant MARIA R. METCALF was duly served in the manner  
16 prescribed by Cal. Code of Civ. Pro. § 1162 with written notice demanding that she surrender possession  
17 of the real property to plaintiff not later than three days following service of said written notice. True  
18 and correct copies of said written notice with corresponding proof of service are attached hereto as  
19 Exhibits "2" and "3," respectively, and incorporated herein by this reference.  
20

21      6. That same date, Defendants DOE 1 through DOE 10 were duly served in the manner  
22 prescribed Cal. Code of Civ. Pro. § 1162 with written notice demanding that they surrender possession  
23 of the real property to plaintiff no later than thirty days following service of said written notice. True  
24 and correct copies of said written notice with corresponding proofs of service are attached hereto as  
25 Exhibit "4" and "5" and incorporated herein by this reference  
26  
27  
28

1           7. More than three/thirty days have elapsed since the service of said written notices, but  
2 defendants have failed and refused to surrender possession of said real property and continue to occupy  
3 the real property without plaintiff's authorization or consent.

5       8. The fair and reasonable rental value of the real property is \$50.00 per day. Plaintiff is  
6 entitled to recover a money judgment against defendants for their continued occupancy of the real  
7 property at this daily rate from and after expiration of the notice to quit through the date of judgment.

9       9. Plaintiff is entitled to restitution and possession of the real property from defendants  
10      10 named herein pursuant to California Code of Civil Procedure §§ 1161a(b)(3) and/or 1161a(c) and  
11      11 therefore requests a judgment enforceable by any authorized law enforcement agency.

WHEREFORE, plaintiff prays judgment as follows:

1. For judgment awarding plaintiff restitution and possession of the real property;
  2. For monetary damages according to proof;
  3. For costs of suit incurred herein.
  4. For such other and further relief as the court deems proper.

Date: May 7, 2008

By:

EDWARD A. TREDER, Attorneys for Plaintiff